United States Department of Labor
Employees' Compensation Appeals Board

T.S., Appellant	)	
and	)	**Docket No. 20-0659**
	)	**Issued: September 21, 2020**
U.S. POSTAL SERVICE, TAYLORSVILLE POST OFFICE, Taylorsville, MS, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On February 3, 2020 appellant filed a timely appeal from a January 9, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish a diagnosed medical condition causally related to the accepted November 19, 2019 employment incident.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the January 9, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On November 20, 2019 appellant, then a 43-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on November 19, 2019 she sustained a left shoulder condition when pulling down mail from a shelf of a case while in the performance of duty. She stopped work on the date of the alleged injury.

The employing establishment properly executed an authorization for examination and/or treatment (Form CA-16) on November 20, 2019. The Form CA-16 noted appellant's history of a left shoulder injury on November 19, 2019.

In a note dated November 20, 2019, Sharon Scruggs, a certified family nurse practitioner, related that appellant was seen on that date and that she would be released to return to work pending a follow-up appointment on November 25, 2019.

In a development letter dated December 2, 2019, OWCP advised appellant that additional medical evidence was necessary to establish her claim. It indicated that the evidence it received had been signed by a nurse practitioner; however, it explained that medical evidence must be submitted by a qualified physician, and that nurse practitioners and physical therapists are not considered qualified physicians under FECA unless their medical reports are counter-signed by a physician. Appellant was also advised that pain was a symptom, not a valid diagnosis. OWCP informed appellant of the medical evidence necessary to establish her claim and afforded 30 days for appellant to respond.

OWCP subsequently received additional evidence. In a November 20, 2019 attending physician's report (Part B of the Form CA-16), Ms. Scruggs listed a diagnosis of left shoulder pain. In a separate report of the same date, she reviewed appellant's history of injury, conducted a physical examination, and diagnosed left shoulder pain.

In a follow-up report dated November 25, 2019, Ms. Scruggs noted that appellant's left shoulder pain improved on rest. She noted a diagnosis of left shoulder pain. In a note dated November 25, 2019, Ms. Scruggs stated that she had seen appellant on that date and that she was unable to return to work until further notice.

In a duty status report (Form CA-17) dated December 5, 2019, Billy R. Windham, a certified nurse practitioner, noted clinical findings of left supraspinatus tendinitis and recommended work restrictions.

OWCP also received a December 5, 2019 work status form report by Mr. Windham, which noted appellant's work restrictions and a physical/occupational therapy order of the same date, also signed by Mr. Windham.

By letter dated December 11, 2019, the employing establishment controverted appellant's claim. It noted that she had not submitted medical evidence containing a signature from a qualified physician and that the work restrictions of December 5, 2019 were inconsistent with appellant's claimed injury.

On December 17, 2019 Kayla Spradley, a physical therapist, reported that she had conducted therapeutic exercise to treat appellant's left supraspinatus sprain.

In a work status report form dated January 6, 2020, Mr. Windham related that appellant had no work restrictions and could resume regular-duty work immediately.

By decision dated January 9, 2020, OWCP accepted that the November 19, 2019 employment incident had occurred, as alleged. However, it denied the claim, finding that the medical evidence of record was insufficient to establish a diagnosed medical condition causally related to the accepted employment incident. Thus, appellant had not met the requirements to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,[3] that an injury was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[4] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[6] The second component is whether the employment incident caused a personal injury.[7]

Rationalized medical opinion evidence is required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment incident.[8]

[3] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *B.P.*, Docket No. 16-1549 (issued January 18, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[7] *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *M.O.*, Docket No. 19-1398 (issued August 13, 2020); *J.L.*, Docket No. 18-1804 (issued April 12, 2019).

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted November 19, 2019 employment incident.

In support of her claim, appellant submitted reports, work excuse notes, duty status reports, and records of physical therapy dated from November 20, 2019 through January 6, 2020 signed by a physical therapist and/or nurse practitioners. The Board has held that medical reports signed solely by a nurse practitioner or a physical therapist are of no probative value, as such healthcare providers are not considered physicians as defined under FECA, and therefore are not competent to provide a medical opinion.[9] Consequently, these reports will not suffice for purposes of establishing entitlement to FECA benefits.

As appellant has not submitted rationalized medical evidence from a qualified physician establishing a diagnosed medical condition causally related to the accepted November 19, 2019 employment incident, the Board finds that she has not met her burden of proof.[10]

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a diagnosed medical condition causally related to the accepted November 19, 2019 employment incident.

[9] 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by state law); *see David P. Sawchuk* 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurse practitioners, and physical therapists are not competent to render a medical opinion under FECA). *See also D.H.*, Docket No. 18-0072 (issued January 21, 2020) (physical therapists are not considered physicians under FECA); *S.J.*, Docket No. 17-0783, n.2 (issued April 9, 2018) (nurse practitioners are not considered physicians under FECA).

[10] The Board notes that the case record contains an authorization for examination and/or treatment (Form CA-16) dated November 20, 2019. A properly completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the January 9, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 21, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board